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LAY PARTICIPATION IN SHAPING SURROGACY LAWS: A CASE STUDY IN EAST ASIAN CONTEXT

Abstract:

Regarding the issue of surrogacy motherhood, challenges from aspects of law, ethics, and gender have never ceased. In response to the ever-growing requests for legalizing gestational surrogacy, the Taiwan Department of Health held two civil consensus conferences in 2004 and 2012 respectively, in the hope of understanding general citizens' opinions on surrogacy motherhood and shaping future legislation. Although the scheme of consensus conferences is developed along the theory of deliberative democracy and is designed for providing solutions to controversial issues, would such a scheme help to clarify the issue of gestational surrogacy? Furthermore, since surrogacy motherhood is a highly gendered issue, did the civil consensus conferences include or facilitate women's voices? And finally, is gender justice embodied in the conclusions of the conferences?

In the theory of Jürgen Habermas, an ideal consensus conference should be built in an environment where every participant is provided with essential information and is able to communicate with each other. However, according to Nancy Fraser, there are barriers in the actually existing democracy. If the multiple disadvantages of women in public spheres are not addressed, there would be no gender justice and no valid participation of deliberative democracy.

Through studying the minutes and conclusion reports of the two consensus conferences, this paper discovered that in general, deliberative democracy works well to bring out legal and moral consciousness shared by lay people, and thus provide important guidance to Taiwanese legislators. Moreover, a consensus conference on surrogacy motherhood should show more gender-awareness in selecting participants, providing multiple viewpoints, and accommodating an environment where women feel comfortable to speak up.

Keywords:

surrogacy, lay participation, social justice, reproductive rights, deliberative democracy